

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MICHAEL W. ERVIN,

Plaintiff,

vs.

No. CIV 21-0949 JB/JHR

THE UNITED STATES INTERNAL
REVENUE SERVICE,

Defendant.

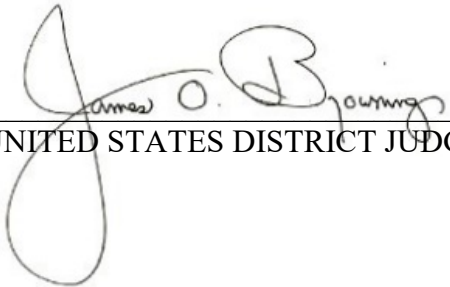
MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff Michael W. Ervin’s Motion to Dismiss, filed March 28, 2022 (Doc. 17)(“MTD”). In the MTD, Ervin requests that the Court dismiss his Motion to Compel a Response from Defendant the United States Internal Revenue Service, filed September 28, 2021 (Doc. 1)(“Complaint”), which the Court construes as a civil Complaint, see MTD at 1. In his Complaint, Ervin seeks to compel the IRS to send him a COVID-19 stimulus payment check. See Complaint at 1. In his MTD, Ervin states that he wishes to dismiss this proceeding, because he has now received the stimulus payment from the IRS. See MTD at 1.

The Court construes the MTD as a notice of voluntary dismissal under rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 41(a)(1)(A)(i). Rule 41(a)(1)(A) allows a plaintiff to voluntarily dismiss an action without prejudice “before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). See Janssen v. Harris, 321 F.3d 998, 1000 (10th Cir. 2003). This case is still in the screening phase, service has not been effectuated, and the IRS has not filed a responsive pleading. The Court,

therefore, will grant the MTD and will dismiss this action without prejudice.

IT IS ORDERED that: (i) Plaintiff Michael W. Ervin's Motion to Dismiss, filed March 28, 2022 (Doc. 17), is granted; (ii) the Motion to Compel a Response from Internal Revenue Service, filed September 28, 2021 (Doc. 1), which the Court construes as a civil complaint, is dismissed; and (iii) the Court will enter a Final Judgment closing this case.


UNITED STATES DISTRICT JUDGE

Parties:

Michael W. Ervin
Grants, New Mexico

Plaintiff pro se